

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC Docket No. 96-128

In the Matter of)

Implementation of the Pay)
Telephone Reclassification and)
Compensation Provisions of the)
Telecommunications Act of 1996)

COMMENTS

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SUMMARY

Commission prescribed compensation is not necessary for calls to the presubscribed carrier because the payphone owner can ensure that it receives adequate compensation through the contract process. Similarly, the Commission should not prescribe compensation for inmate-only phones and semi-public phones. Compensation also should not be prescribed for international calls. The local coin-rate and the intrastate coin rate should be left to the states in the first instance.

A set use fee approach should be adopted to implement per-call payphone compensation because it is both fair and competitively neutral. It also is in keeping with the intent of the 1996 Telecommunications Act to eliminate indirect subsidies for payphone use. A set use fee, however, cannot be implemented in the near future because development would be necessary to allow for the real-time identification of a call as originating from a payphone. Therefore, until such development can be completed, it may be appropriate for the Commission to adopt a carrier-pays approach in the interim.

The amount of payphone compensation should be based on payphone providers' costs originating the types of calls for which compensation is prescribed. The Hatfield Study shows that payphone compensation for access code calls should be no more than 8.3 cents per call. A Commission analysis indicated that compensation based on LEC payphone costs would be approximately 12 cents per call.

Incumbent LEC payphones should be treated as unregulated, detariffed, customer premises equipment and all direct and indirect interstate and intrastate subsidies for this equipment should be eliminated. The interstate carrier common line (CCL) charge should be reduced by an amount equal to the interstate allocation of payphone costs. In addition, the CCL charge should be reduced by an amount equal to the increase in SLC revenues once LECs are required to pay the SLC on their payphone lines.

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COMMENTS

MCI Telecommunications Corporation (MCI) hereby submits comments on the Commission's Notice of Proposed Rulemaking (NPRM) concerning the implementation of Section 276 of the Telecommunications Act of 1996 (the Act), which requires the Commission to implement a per-call compensation mechanism for calls from payphones and to deregulate local exchange carrier (LEC) payphones. MCI addresses the Commission's specific proposals below.

I. COMPENSATION FOR COMPLETED INTRASTATE AND INTERSTATE CALLS
ORIGINATED BY PAYPHONES [¶ 14-23]

[16,17]The Commission tentatively concludes that it is required to ensure that payphone service providers (PSPs) are fairly compensated for each and every completed intrastate and interstate call, regardless of whether the PSP currently receives compensation for the particular call originated by its payphone. The Commission, however, tentatively finds that it should prescribe compensation only when payphone providers are not already fairly compensated. Thus, the Commission finds that it need not prescribe per-call compensation for 0+ calls because

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competition in this area ensures "fair" compensation for PSPs.

[16]As an initial matter, MCI requests that the Commission clarify that a call is "completed" for compensation purposes when the call is transmitted to the called party and there is a billable call. This clarification is necessary because, apparently, some LECs may consider a call completed as soon as it reaches an intervening carrier's network, even if the call is not successfully transmitted to the called party. Carriers do not bill consumers for such "uncompleted" calls and, it is clear from the Act, Congress did not intend this Commission to prescribe compensation for such calls.

[16]The Commission is correct in tentatively concluding that it should not prescribe a compensation amount for 0+ calls because it already has "ensured" that PSPs are adequately compensated through its support of the current market structure for payphone services. Namely, by refusing to require the implementation of billed party preference, the Commission has ensured the continuation of the current system where operator service providers "compete" to be the presubscribed carrier at a payphone by making commission payments to the payphone owner, thus ensuring that payphone owners are fairly compensated for calls made from their phones to the presubscribed carrier. Therefore, there is no need for the Commission to prescribe additional compensation for these calls. This applies not only to 0+ interLATA calls, but also 10XXX-0+, 0+ intraLATA, 0-, 00-,

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and 01+ calls. In fact, through the presubscription process, the payphone owner can require fair compensation for all calls to the presubscribed carrier. Accordingly, the Commission should not prescribe compensation for any calls to the presubscribed carrier.

[16]The Commission should not prescribe compensation for any calls from semi-public phones and inmate-only phones. LECs charge premise owners for semi-public pay stations. Therefore, the payphone provider already receives "fair" compensation for calls from these phones, or has the ability to do so. And, the owner of inmate-only payphones can ensure that it receives fair compensation through the contract process used to select the OSP and payphone provider for a prison. Accordingly, as with 0+ calls, there is no need for the Commission to prescribe compensation for calls from these phones.

[18]MCI opposes the Commission's tentative conclusion that it should prescribe compensation for international calls because there are unique problems associated with Commission-imposed costs on such calls. In addition, the Act does not require the Commission to ensure compensation for international calls.

[18]In any event, the Commission should not prescribe compensation for international calls billed to non-US carrier customers (such as international 800, collect, and foreign-billed credit cards). Compensation on such calls is not practicable and it would impose an undue hardship on US carriers because the

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consumer billed for the call would be the customer of a foreign carrier, not the US carrier. The Commission would have no jurisdiction to require the foreign carrier to bill and collect the PSP compensation. In addition, neither the US carrier nor the PSP would have the information necessary to directly bill the consumer and the settlements process would preclude carriers from recovering the cost of compensation through their rates. Therefore, the US carrier would have no mechanism by which to recover its increased cost. The magnitude of this problem is particularly clear in connection with 800 calls that terminate to a foreign country. In some countries the settlement rate is so low that the incremental cost of the PSP compensation would seriously impact the ability of the US carrier to recover its cost for the call.

[19-22]The Commission seeks comment on how it should ensure that PSPs receive fair compensation for local coin sent-paid calls. According to the Commission, rates for local coin calls, which are set by state commissions, may not be high enough to be "fairly" compensatory. The Commission proposes a number of options in order to ensure fair compensation for these calls.

[19-22]MCI supports the Commission's proposed option, which would leave the amount of local call charges to the states in the first instance. If PSPs believe that these rates do not provide fair compensation, they can petition the Commission to review the rates and impose additional compensation, if necessary. Any such

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compensation should be collected at the payphone in the form of an additional coin charge. The Commission also should not prescribe compensation for any coin-sent paid calls because the payphone owner can receive fair compensation through the coins deposited.

[23]The Commission also seeks comment on what rules, if any, should be adopted to prevent fraud designed to maximize compensation. Specifically, the Commission notes that a payphone owner could repeatedly autodial subscriber 800 calls as a way to increase compensation. MCI has been unable to identify an effective way for IXC's to prevent, or even detect, such abuse, in part, because an unscrupulous PSP could dial 800 numbers where the 800 service is provided by different carriers. Accordingly, the fraud may not be detectable by any one IXC. LECs, however, should be able to detect a pattern of repeated 800 calling. Therefore, a reporting requirement on LECs should be required to detect fraudulent activity. In addition, the Commission should impose severe penalties on any PSP found to have engaged in fraud in order to maximize compensation, and the PSP should be required to refund all compensation payments received for the period in which the fraud occurred. The PSP also should not be entitled to any future compensation for 800 calls. These measures may seem to be severe, but they are fully warranted.

II. ENTITIES REQUIRED TO PAY COMPENSATION [24-28]

[24-27]The Commission discusses two approaches for the payment of compensation. The first approach is a carrier-pays mechanism, built on the per-call compensation mechanism previously proposed for interstate access code calls and used today by AT&T and Sprint. Under this method, the interexchange carrier (IXC) that receives a call from a payphone would be required to pay a per-call charge to the PSP. According to the Commission, each IXC would decide independently how to recover this cost. The second approach involves a "set use fee," where the consumer who pays for the call would also be billed a fee for using the payphone by the IXC, which the IXC would then remit to the PSP. The Commission tentatively concludes that the carrier-pays method is the preferred approach because it would minimize transactional costs.

[26,27,28]The best approach for the implementation of payphone compensation in terms of fairness and competitive neutrality is a set use fee. A set use fee would place the cost of using the payphone on the cost causer and, in doing so, would encourage consumers to make economic decisions when using payphones. In addition, the approach would be competitively neutral because the Commission would not be promoting the use of payphones-- by "hiding" the cost of such use-- over other services and technologies such as wireless, where the consumer

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must pay for the cost associated with the necessary equipment. A set use fee also is in keeping with the intent to eliminate indirect subsidies for payphone use. The Act requires the Commission to end ratepayer subsidies for LEC payphones, however, a carrier-pays approach is simply a different type of subsidy where an IXC's customers subsidize payphone-using customers.

[25-28]In addition, a carrier-pays system would not be easier or less expensive to administer than a set use fee if, as implied by the Commission, carriers are to have the ability to pass the cost of using payphones on to the cost causer. On the contrary, to do so would require systems development comparable to that necessary to implement a set use fee; namely, the provision of real-time information identifying a call as originating from a payphone. Real-time information would be necessary so that the payphone charge could be passed on to the consumer in connection with the bill for the telecommunications service accessed from the payphone. Unless the Commission orders the development of this real-time capability, carriers would not be able to impose the cost of compensation on the cost causer.

[25-28]Since this real-time information is not currently provided, a set use fee cannot be implemented in the near term. Therefore, in the interim, a carrier-pays mechanism may be an alternative. The Commission, however, should establish a timeframe within which the necessary development for implementing a set use fee must be completed.

III. ABILITY OF CARRIERS TO TRACK CALLS FROM PAYPHONES [29-31]

[29-31]The Commission previously has found that IXC's are able to track access code calls, other than 950 calls, through ANI and other coding digits that appear on payphone-originated calls. Accordingly, the Commission states that IXC's that carry access code calls and toll-free calls originating from payphones will be required to track payphone calls. For 950 calls, the Commission concludes that it would be reasonable to require IXC's to rely on a usage-based surrogate. The Commission also tentatively concludes that IXC's should be required to initiate an annual independent verification of their per-call tracking functions, until 1998, to be made available for Commission inspection, to ensure that they are tracking all of the calls for which they are obligated to pay compensation. The Commission also seeks comment on whether LEC's that provide network tracking for their own payphones should make those tracking services available to private payphone owners (PPO's) at the same rates, terms and conditions as they provide themselves.

[30,31]The Commission should require LEC's to make available to PPO's tracking services at the same rates, terms and conditions as they provide to themselves so that both LEC's and PPO's will be able to track calls from their phones. This tracking service should include the ability to track 950 calls. Once PPO's and LEC's have the ability to track calls from their payphones, there would be no need for the Commission to require IXC's to track

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these calls or to initiate the annual verification proposed by the Commission.

IV. ADMINISTRATION OF PER-CALL COMPENSATION [32-35]

[33]The Commission tentatively concludes that the current direct-billing arrangement for payphone compensation should be maintained with the addition of requiring IXC's and the intrastate interexchange operations of LEC's to send back to each PSP a statement indicating the number of toll-free and access code calls that each carrier has received from each of that PSP's payphones. The Commission also proposes to require that each carrier paying compensation file each year a report, until 1998, listing the total amount of compensation paid to PSP's for intrastate, interstate and international calls; the number of compensable calls received by the carrier; and the number of payees. The Commission further finds that its proposed compensation plan would use ANI as the basis for tracking calls.

[33]Since all PSP's, LEC's and PPO's, will have the ability to track calls from their payphones after LEC tracking services are made available, the Commission should not impose this burden on IXC's and other carriers. Rather, based on the tracking information, PSP's should render bills to carriers for the use of their payphones.

[33]In order to be able to audit the bills submitted by PSP's under a carrier-pays approach and to be able to implement a set

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use fee in the future, carriers must be provided information at the time of the call, through information digits in connection with ANI, that appropriately identifies a payphone entitled to compensation. To prevent disputes over compensation, only lines with the appropriate associated information digits should be entitled to compensation. The Commission also should require the LECs to implement two unique information digits to designate payphones: one code to designate LEC payphones; and one for non-LEC payphones.¹ Industry guidelines for ANI Information Digit Codes show that two unique information digits have been assigned to payphones-- code 70 for private payphones and code 27 for LEC payphones. In addition, the Commission already has ordered LECs to implement a uniform and unique code for private payphones in the Originating Line Screening (OLS) Order.² Although in the OLS Order the Commission has allowed LECs to provide OLS service through the line information database (LIDB), for payphone compensation purposes, LECs should be required to implement the information digits for payphones as part of ANI, which would allow IXCs to identify a call as originating from a payphone at the time of the call.

¹ A separate code for LEC and non-LEC payphones would be appropriate because these phones represent different risks for fraudulent calls and, therefore, by identifying each, carriers would be able to better detect and prevent fraud.

² Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation (OLS Order), Third Report and Order, CC Docket No. 91-35, FCC 96-131 (released April 5, 1996).

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[33]The Commission should require all carriers paying compensation to report the total amount of compensation paid annually to all PSPs in order to determine whether the compensation amount should be adjusted. There is no need to report payments in the detail proposed by the Commission, since PSPs will have their own records of compensable calls. Moreover, the information requested is proprietary in nature and could be used for anti-competitive purposes.

[34]If appropriate information digits are provided, most of the Commission's proposed guidelines for the resolution of ANI disputes will not be necessary. In any event, the Commission should not adopt its proposed third, fourth and final guidelines. The proposed third guideline, which provides that once an intraLATA carrier identifies a payphone, the IXC must accept claims for compensation for that ANI until the intraLATA carrier provides information that the payphone has been disconnected, conflicts with Section 226(b)(1)(E) of the Communications Act of 1934, as amended, which requires OSPs to withhold all payments from aggregators that block access code dialing. In addition, there is no basis for the Commission to require IXCs to pay compensation for phones that are not "payphones" and, if such information becomes known to the IXC in any way, the obligation to pay compensation should end. Moreover, if such information becomes known after compensation has been paid, the PSP, at a minimum, should be required to refund the compensation, with

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interest.

[34] In addition, this proposed guideline is untenable, anti-competitive, and creates the potential for abuse because it places control over an IXC's cost obligations in the hands of a competitor. Instead of the Commission's proposal, intraLATA carriers should be required to inform IXCs, within 24 hours, of the exact time when a payphone is disconnected, which would include a change in status of the phone, so that IXCs know which calls are not entitled to compensation.

[34] The proposed fourth guideline, which provides that an IXC should be able to refuse payment for compensation claims that are submitted more than one year after the end of the compensation period, should not be adopted because it is contrary to prior Commission precedent that bills for service must be submitted within a "reasonable" time. One year is not a reasonable time. In the context of telecommunications service, three months is a reasonable time, and there is no reason to expand this for PSPs.

[34] Finally, the Commission should not adopt the final proposed guideline, which would toll the statute of limitations applicable to a PSP for bringing a complaint to the Commission until the IXC issues a final denial for a compensation claim. Any complaint filed by a PSP at the Commission is subject to Section 415 of the Communications Act of 1934, which prescribes the period within which complaints must be filed.

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V. COMPENSATION AMOUNT [¶ 35-40]

[38]MCI agrees with the Commission's tentative conclusion that compensation for PSPs should be based on their costs in originating the types of calls for which compensation is prescribed. An appropriate surrogate for PSPs' costs is the LECs' costs for providing payphone service. There are two estimates of these costs on the record in the Commission's previous payphone compensation proceeding, CC Docket No. 91-35: the Hatfield Study, which was submitted by MCI and which is attached hereto;³ and the Commission's calculation, which was set forth in the Notice of Proposed Rulemaking.⁴ The Hatfield Study demonstrates that the LECs' cost of providing service for access code calls, excluding 800 calls, is no more than 8.3 cents per call. With the inclusion of 800 calls, this amount should be even lower. MCI also submits as an attachment hereto its response to the challenges to the Study for inclusion in the record in this proceeding.

[38]In the NPRM, the Commission proposed a compensation amount of 12 cents, based on LEC payphone costs. The Commission derived this amount based on the charge for the average local payphone call (\$0.23) minus the average charge for a same-zone

³ The study was first submitted with MCI's Comments in CC Docket No. 91-35, filed on October 10, 1995.

⁴ Policies and Rules Concerning Operator Services Access and Pay Telephone Compensation, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 91-35, 6 FCC Rcd. 4736, 4747 (1991).

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daytime business call (\$0.09) minus the estimated coin collection expense (\$0.02). MCI opposed the Commission's proposed methodology as jurisdictionally incorrect because there was no evidence to indicate that these charges related to interstate costs. However, the Commission now must determine fair compensation for interstate and intrastate calls and, therefore, this is no longer an issue.

[38] State-established rates for local coin calls, however, is not an appropriate surrogate for payphone compensation without the adjustments proposed by the Commission. In addition, the proposed compensation amount of 12 cents should be further adjusted downward because the charge for local payphone calls includes costs in addition to the cost of the payphone, such as the cost of the use of the network, and may include a contribution for other local services.

[38] The Commission asks whether compensation levels should be permitted to change in the future and whether a cost index or price cap system would be appropriate to ensure that compensation levels reflect expected changes in unit costs over time. The costs of providing payphone service are non-traffic sensitive, for the most part, and, therefore, they do not significantly increase with increased usage. Accordingly, as call volumes increase, the Commission should adjust the amount of per-call compensation downward. In addition, competition and advances in technology should lead to a decrease in the unit costs of

payphones, further indicating that the per-call compensation amount should be adjusted downward with time. A cost index or price-cap system may be appropriate to ensure that compensation levels reflect expected changes in unit costs, but any such system must include a "productivity factor" like the current LEC price cap mechanism to account for anticipated efficiencies.

[39]The Commission also asks whether PPOs should be provided some measure of interim compensation, to be paid until the effective date of the final rules adopted in this proceeding, "for the growing volume of dial-around calls originated from their payphones."⁵ As indicated above, most payphone costs are non-traffic sensitive. Therefore, interim compensation to account for an increase in dial-around calls originated from payphones is not necessary to ensure that PPOs are fairly compensated.

VI. RECLASSIFICATION OF PAYPHONES [¶ 41-49]

[42,49,56]MCI agrees with the Commission's tentative conclusion that incumbent LEC payphones should be treated as unregulated, detariffed customer premises equipment (CPE). Accordingly, all assets relating to payphone service, including all facilities, and associated taxes and depreciation, should be transferred to unregulated status. AT&T payphones also should be classified as CPE.

⁵ NPRM at ¶39.

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[42,45,48,49]The loops connecting payphones to the network, the central office coin service and operator service facilities supporting incumbent LEC payphones should not be transferred to unregulated status. Moreover, LECs should be required to provide to PSPs, on a nondiscriminatory tariffed basis, all functionalities used in their delivery of payphone service, including central office coin transmission services, and other services, such as fraud protection, installation and maintenance services, per-call tracking capabilities and call validation services. With respect to fraud, it would be more effective to require the LECs to make available the internationally recognized indication of a payphone-- a "cuckoo" tone-- rather than the specialized telephone numbers used for LEC phones today.

[47]MCI also agrees with the Commission's tentative conclusion that Section 68.2(a)(1) of the Commission's rules should be amended to include registration of both instrument implemented and central-office implemented payphones. Also, the demarcation point for LEC payphones should be consistent with the demarcation point for PPOs today.

[55]With respect to the Commission's proposal to allow the bundling of CPE and payphone service, MCI recommends that the Commission review the effect of this proposal after one year. If the Commission finds that bundling has anticompetitive impacts, it can re-impose the bundling prohibitions. In addition, the Commission should make clear that carriers that bundle CPE and

transmission service must make each available separately.⁶

VII. TERMINATION OF ACCESS CHARGE COMPENSATION AND OTHER
SUBSIDIES [¶ 50-54]

[50-54] Under the Act, the Commission must require LECs to remove all direct and indirect interstate and intrastate subsidies for their payphone equipment. In the interstate jurisdiction, this requires the removal of investment recorded in Account 2351 and the associated expense recorded in Account 6351, as well as the additional costs allocated to the interstate jurisdiction due to this plant being assigned to the interstate jurisdiction. The interstate carrier common line (CCL) charge should be reduced by an amount equal to the interstate allocation of payphone costs.⁷ For the price cap carriers, the Commission must require an exogenous adjustment equal to the amount of removed expenses. This exogenous adjustment will apply only to the Common Line basket. In addition, all PSPs, including LECs, should be required to pay the subscriber line charge (SLC). Since LECs do not currently pay SLCs on their payphone lines, this will increase the LECs' SLC revenue, which must result in an equivalent reduction in the CCL charge.

⁶ This position is fully consistent with that taken by MCI in CC Docket No. 96-61.

⁷ Since state CCL charges often mirror the federal CCL charge then removal of payphone costs from the federal CCL charge should result in a reduction in state CCL charges.

VIII. NONSTRUCTURAL SAFEGUARDS FOR BOC PROVISION OF PAYPHONE SERVICE [¶ 57-66]

[58-61, 64-66]The Act requires that, at a minimum, the Commission impose nonstructural separations rules on the BOCs' payphone service equal to those adopted in Computer III, which the Commission proposes to do. The Court, however, has remanded the Commission's Order adopting the Computer III safeguards for further consideration because the Commission failed to provide support for some of its material conclusions regarding the ability of the safeguards to prevent discrimination.⁸ Thus, any revisions to the safeguards or new safeguards adopted in the remand proceeding⁹ should also apply to the BOCs' provision of payphone service.

IX. ABILITY OF BOCS TO NEGOTIATE WITH PREMISE OWNERS ON THE PRESUBSCRIBED INTERLATA CARRIER [¶ 67-72]

[67,68,71,72]The Act makes it clear that, ultimately, the location provider, or the premise owner, has the right to select the presubscribed interLATA and intraLATA service provider for payphones at the location. Currently, non-BOC payphone providers can negotiate with the location provider concerning the selection of the interLATA carrier, and the Act directs the Commission to extend this right to the BOCs, "unless the Commission

⁸ California v. FCC, 39 F.3d 919 (9th Cir. 1994).

⁹ Computer III Further Remand Proceeding: Bell Operating Company Provision of Enhanced Services, Notice of Proposed Rulemaking, CC Docket No. 95-20, 10 FCC Rcd. 8360(1995).

determines... that it is not in the public interest."

[71,72]Until the BOCs face significant competition in the local exchange market, they will be able to subsidize Commission payments to premise owners with regulated service revenues and, thus, behave anticompetitively in the payphone market. Therefore, they should not be able to negotiate with the location provider to select the presubscribed carrier until there is effective competition in the local exchange market.

X. ABILITY OF PSPS TO NEGOTIATE WITH LOCATION PROVIDERS ON THE PRESUBSCRIBED INTRALATA CARRIER [¶ 74-75]

[75]The Act requires the Commission to provide for all PSPs to have the right to negotiate with the location provider to select the presubscribed intraLATA carrier for calls from their payphones. The Commission notes, however, that in some states, competitive payphones are required to route intraLATA 0+ and 0-calls, and sometimes other intraLATA calls, to the incumbent LEC.

[75]The Commission should make it clear that any state requirements mandating the routing of calls to the incumbent LEC are unlawful. Further, location providers should be able to change the presubscribed intraLATA carrier, through a "fresh-look" process, if they entered into a "contract" (including an LOA) with the incumbent LEC before a choice in the presubscribed intraLATA carrier was available.

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XI. PUBLIC INTEREST PAYPHONES [¶ 76-82]

[77-79, 81]The Commission seeks comment on whether it is in the public interest to maintain payphones provided in the interest of the public health, safety and welfare in locations where there would otherwise not be a payphone. The Commission asks whether it should prescribe national guidelines for the maintenance of these phones or whether it should defer to the states. The question of public interest payphones, including whether there are any and whether there should be any, is part of the larger question of ensuring that all consumers have access to telephone service through universal service. Accordingly, this question should be referred to the Federal-State Joint Board on Universal Service.

XII. DIALING PARITY [¶ 84]

[84]MCI agrees with the Commission's tentative conclusion that the benefits of the dialing parity requirements it adopts pursuant to Section 251(b)(3) should be extended to all payphone location providers. With respect to the TOCSIA unblocking requirements, the Commission should extend those requirements to intraLATA calls.

XIII. LETTERLESS KEYPADS [¶ 85-87]

[85-87]MCI agrees with the Commission's tentative conclusion that the use of letterless keypads violates both TOCSIA and the